



Employment Court of New Zealand

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Brunning v Riccarton Florist Limited [2021] NZEmpC 136 (17 August 2021)

Last Updated: 20 August 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[\[2021\] NZEmpC 136](#)

EMPC 26/2021

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER	of an application to adjourn hearing
BETWEEN	SHIRLEY BRUNNING Plaintiff
AND	RICCARTON FLORIST LIMITED Defendant

Hearing: (on the papers)

Appearances: P Mathews, advocate for plaintiff
K Rushton, agent for defendant

Judgment: 17 August 2021

INTERLOCUTORY JUDGMENT OF JUDGE B A CORKILL

(Application to adjourn hearing)

[1] This judgment deals with an application to adjourn a fixture set down for hearing on 16 September 2021.

[2] To set the scene, by her challenge Ms Shirley Brunning seeks an increase of the sums she was awarded by the Employment Relations Authority on 22 December 2020.¹ Riccarton Florist Ltd (RFL), in effect, seeks a decrease because it alleges there was a 100 per cent contribution to the circumstances giving rise to Ms Brunning's dismissal. No order of stay has been made.²

1 *Brunning v Riccarton Florist Ltd* [\[2020\] NZERA 532 \(Member van Keulen\)](#).

2. Although the Authority was requested to make such an order when considering the making of a compliance order and declined to do so: *Brunning v Riccarton Florist Ltd* [\[2021\] NZERA 296](#) at

SHIRLEY BRUNNING v RICCARTON FLORIST LIMITED [\[2021\] NZEmpC 136](#) [17 August 2021]

[3] On 12 July 2021, the Authority issued a compliance order in Ms Brunning's favour.³ RFL was ordered to pay her a sum totalling \$20,778.45, which included costs, by 13 August 2021.⁴

[4] In the course of the determination, the Authority recorded that RFL's agent, Mr Rushton, had advised that the company was not in a position to make any payment to Ms Brunning. However, the Authority noted that no detail or supporting evidence in support of this statement had been provided.⁵

[5] Mr Mathews, advocate for Ms Brunning, stated that after the compliance determination was issued, Mr Rushton emailed him on 29 July 2021, stating again that RFL has no assets, no cash, ceased trading some time ago and is unable to pay the

amount claimed by Ms Brunning.

[6] Mr Mathews takes an inference from this communication that RFL's business may have been transferred to another entity, as a mechanism to avoid any liability which may have arisen from the investigation of Ms Brunning's dismissal grievance. He also considers that Mr Rushton may have an interest in that entity.

[7] Ms Brunning's position is that, given the statements that have been made recently to the Authority, and to Mr Mathews, her focus should be on enforcing the awards made by the Authority, and not expending possibility unrecoverable sums on advancing her challenge.

[8] Mr Rushton has informed the Court that RFL considers the application for the adjournment to be "acceptable".

[9] Given the circumstances, I invited Mr Mathews and Mr Rushton to advise the Court as to the pros and cons of a direction to mediate.

[11] (Member Cheyne).

3 *Brunning v Riccarton Florist Ltd*, above n 2.

4 At [16]–[22].

5 At [9] and [15].

[10] Mr Mathews has confirmed Ms Brunning's willingness to attend mediation. Mr Rushton says in effect that such an event would be pointless, although he does point to the fact that there is an offer "on the table", which it appears from the email he sent to Mr Mathews, is an offer made by him personally to pay a proportion of the sum awarded.

[11] Pulling these threads together, I agree that the fixture should be vacated so that the plaintiff can focus on enforcement and the parties can work towards resolving their present differences.

[12] I direct them to attend mediation. Mr Mathews is to make the necessary arrangements and advise the Court of the proposed date. The Registrar will then establish a telephone directions conference to follow that event.

[13] I reserve costs.

B A Corkill Judge

Judgment signed at 3.45 pm on 17 August 2021